

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,
Plaintiff,

v.

MATTHEW R. DESCAMPS,
Defendant.

No. CR-05-104-FVS

ORDER DENYING MOTIONS TO
DISMISS BASED UPON
INEFFECTIVE ASSISTANCE OF
COUNSEL

THIS MATTER comes before the Court based upon the defendant's multiple motions to dismiss the indictment based upon ineffective assistance of counsel. He is represented by Jeffrey S. Niesen; the government by Stephanie Whitaker.

BACKGROUND

The defendant has filed multiple motions alleging that he was denied constitutionally effective assistance of counsel by his first two attorneys. Three themes flow through his motions. One theme is that his former attorneys failed to consult with him. Another theme is that his former attorneys failed to develop potential defenses. A third theme is that his former attorneys disobeyed his instructions to cease questioning his competence to stand trial.

STANDARD

The defendant's allegation of ineffective assistance is governed by a familiar standard. To begin with, he must demonstrate that his

1 former attorneys' performance was deficient. Furthermore, he must
2 demonstrate that he suffered some material prejudice as a result.
3 *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80
4 L.Ed.2d 674 (1984)

5 **CONSULTATION AND INVESTIGATION**

6 During April of 2007, Jeffrey S. Niesen was appointed to
7 represent the defendant at public expense. This is the defendant's
8 third court-appointed attorney. As near as the Court can tell, Mr.
9 Niesen has consulted regularly with his client. In addition, he has
10 hired an investigator who has spent a substantial amount of time
11 working on the case. Given these circumstances, the defendant has
12 suffered no prejudice as a result of his former attorneys' alleged
13 failure to consult with him or to develop potential defenses.

14 **DISOBEYING CLIENT'S INSTRUCTIONS**

15 Despite the defendant's strenuous objections, his first two
16 attorneys asked the Court to determine his competence to stand trial.
17 He argues that, by doing so, they deprived him of effective assistance
18 of counsel. He is incorrect. It is widely understood that, in a
19 criminal case, an attorney must abide the decision his client makes
20 with respect to three fundamental issues: whether to plead guilty,
21 whether to waive his right to a jury trial, and whether to testify.
22 *See, e.g., Washington Rule of Professional Conduct 1.2(a)* ("In a
23 criminal case, the lawyer shall abide by the client's decision, after
24 consultation with the lawyer, as to a plea to be entered, whether to
25 waive jury trial and whether the client will testify."). The
26 defendant has failed to cite a single decision, much less precedent,

1 which holds that an attorney must abide his client's instructions to
2 ignore significant evidence indicating that the client is not
3 competent to stand trial. In any event, the defendant suffered no
4 prejudice from his former attorneys' actions. On April 2, 2007, the
5 Court ruled that he is competent to stand trial. A jury trial is
6 scheduled to begin on September 10th.

7 **IT IS HEREBY ORDERED:**

8 The defendant's multiple motions to dismiss the indictment based
9 upon ineffective assistance of counsel (**Ct. Recs. 68, 142, 184, 210,**
10 **216, 221, and 263**) are denied.

11 **IT IS SO ORDERED.** The District Court Executive is hereby
12 directed to enter this order and furnish copies to counsel.

13 **DATED** this 17th day of August, 2007.

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15 s/ Fred Van Sickle
Fred Van Sickle
16 United States District Judge
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